powers were governed by the law prior to the amendment in 1984 and 1986.

At the hearing of the appeal, the Deputy Public Prosecutor informs the court that the Public Prosecutor does not now appeal against the sentences imposed against the respondent on the ground that they are manifestly inadequate.

In the present case, the respondent committed the offences in 1979 but was convicted and sentenced in October 1986.

The Public Prosecutor's argument is that the amendments to section 11(3)(a) and section 11(3)(b) of the Criminal Procedure Code are procedural amendments and that the amendments would apply to all sentencing after the date on which the amendments came into operation irrespective of when the offences were committed.

The authorities are clear that, apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective (see *Lim Sing Hiaw* v. *Public Prosecutor*;[1] *Teo Cheng Leong* v. *Public Prosecutor*;[2] *The King* v. *Chandra Dharma*[3]).

It is the contention of the respondent that an enhancement of the sentencing powers of the District Court is in effect a substantive change in the law and any retrospective application of changes of the court's sentencing powers would infringe Article 11(1) of the Constitution of the Republic of Singapore which provides:

"No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed."

The doctrine which one gathers from the authorities is this: When a statute alters the rights of persons, or creates fresh liabilities with regard to persons, or creates or imposes obligations on persons and thereby alters the law, it ought not be held to be retroactive in its operation unless the words are clear, precise and quite free from ambiguity (see *Director of Public Prosecutions* v. *Lamb*[4]).

The punishment for the offences which the respondent was convicted is prescribed in section 467 of the Penal Code. There has been no change in the punishment prescribed in section 467 by the amendments. The amending statutes have not increased the penalties for the offences, which the respondent was convicted, over and above those which were in existence at the time of the commission of the offences by the respondent. The only change has been to increase the sentencing powers of the District Court. No new disabilities or obligations have been created by the amending statutes, they do not alter the character of the offence or take away any defence which was formerly open to the respondent. It is a mere matter of procedure and according to all the authorities, it is therefore retrospective.

The respondent relies on the second limb of Article 11(1) of the Singapore Constitution. His contention is that the phrase "prescribed by law" does not strictly refer to sentencing under any substantive sections of the Penal Code; that it is wide enough and should be liberally construed, since the liberty of an accused person is concerned, to include sections governing the sentencing powers of a court since the latter affects the maximum sentence that can be imposed in respect of any offence. With due respect to counsel for the respondent, I am unable to agree with this submission. In my view, the second limb of Article 11(1) of the Singapore Constitution was not infringed. That Article protects accused persons from greater punishment for an offence than that prescribed at the time of the commission of the offence.

In my opinion, the trial judge was wrong in his view which he took as to his powers in the matter.

Appeal allowed.

Solicitors: *Toh Tan & Partners.*

SIAH OOI CHOE v. PUBLIC PROSECUTOR

[A.Cr.J. (Thean J.) 26 April 1988]

[Singapore – Magistrate's Appeal No. 155 of 1987]

Companies and Corporations – Abetment of offence under section 406(a) of the Companies Act (Cap. 50, 1985 Ed.) – Sentence – Accused hitherto had unblemished record – Contributions to country and society – Appropriate sentence – "Clang of prison gates" principle – Extenuating circumstances present.

Criminal Procedure – Sentencing – Accused hitherto had unblemished record – Contributions to country and society – Appropriate sentence – "Clang of prison gates" principle.

The appellant was charged for having abetted an offence under section 406(a) of the Companies Act (Cap.

50, 1985 Ed.) by inducing a bank, through deceitful means, to give credit to his company. Three other similar charges of similarly inducing three other banks on three separate occasions to grant credit to his company were taken into consideration for the purpose of determining the sentence.

The appellant pleaded guilty to the charge and was convicted and sentenced to a term of nine months' imprisonment. He appealed against the sentence. The appellant had an unblemished record before the commission of the present offences.

Held, allowing the appeal: (1) the circumstances in the present case were highly exceptional and there were very strong extenuating circumstances in the appellant's favour;

(2) the charge preferred against the appellant is one of the lowest levels in terms of criminality under section 406(a) of the Companies Act;

(3) however, the court cannot agree that a financial penalty was a sufficient punishment. A custodial sentence ought to be imposed;

(4) in the circumstances of this case and in particular the background of the appellant's character and his contribution to society and the country, the "clang of prison gates" principle should apply. The principle is that in the case of a man with an unblemished record, the fact that he has a criminal conviction and finds himself in prison is a very grave punishment and a short prison term should in certain circumstances suffice. This was a case par excellence where a short term of imprisonment was adequate punishment;

(5) a term of imprisonment of three months would be adequate in all the circumstances. The sentence of nine months' imprisonment was set aside and a sentence of three months was substituted.

Cases referred to:

(1) *R.* v. *Iorwerth Jones* (1980) 2 Cr.App.R. (S) 134 (folld).
(2) *R.* v. *James Mitchell Jacob* (1981) 3 Cr.App.R. (S) 298 (cited).
(3) *R.* v. *Ian Andrew Ward* (1981) 3 Cr.App.R. (S) 350 (cited).
(4) *R.* v. *George Kelly* (1983) 5 Cr.App.R. (S) 1 (cited).
(5) *R.* v. *Jayantolal Maganbhal Patel* (1984) 6 Cr.App.R. (S) 169 (cited).
(6) *R.* v. *Michael David Carr* (1984) 6 Cr.App.R. (S) 359 (cited).

MAGISTRATE'S APPEAL.

Michael Sherrard Q.C. (*Woo Tchi Chu* with him) for the appellant.

Chee Wei-Lin (Miss) (Eleanor Wong (Miss) with her) for the Public Prosecutor.

Cur. Adv. Vult.

Thean J.: The appellant was charged for having abetted an offence under section 406(a) of the Companies Act (Cap. 50, 1985 Ed.) by inducing Bank of America N.A. & S.T. ("the bank"), through deceitful means, to give credit to his company, Lamipak Industries Pte. Ltd. ("Lamipak"), to the extent of $757,930. Briefly, the deceitful means employed consisted of submitting to the bank false documents purporting to show that Lamipak had purchased and received goods from a firm, Showa Trading, which it had not. Three other similar charges of similarly inducing three other banks on three separate occasions to grant credit to Lamipak were, with the consent of the appellant, taken into consideration for the purpose of determining the sentence. All these offences were committed over a period of about six months between October 1984 and February 1985. Three out of the four banks that had granted such credit to Lamipak had been repaid in full together with interest and other banking charges. As for the fourth bank, which is United Overseas Bank Limited, a part payment of $200,000 had been made, and the balance of the principal sum of $872,843.42 remains unpaid. The reason for the non-payment is that at the material time, provisional liquidators of Lamipak had been appointed and if such payment were made it would or might amount to a preferential payment. A winding-up order against Lamipak was made on 1 October 1985.

The appellant was arrested by the Commercial Crime Division, C.I.D. on 17 October 1985 and was kept in custody for two days. He was granted bail on 19 October 1985 and thereafter he daily reported to C.I.D. six days a week for 18 months. Subsequently, the Commercial Affairs Department took over the investigation. There followed a period of further investigation by the Commercial Affairs Department and discussion between the prosecution and the defence, which resulted in the charge against the appellant under section 406(a) of the Companies Act. The complaint in respect of which the appellant was arrested is unrelated to the charge. He pleaded guilty to the charge and was convicted and sentenced to imprisonment for a term of nine months. Against that sentence, this appeal is now brought.

It is urged by Mr. Sherrard on behalf of the appellant that, first, in all the circumstances of this case, financial penalty, *i.e.* a fine, would be adequate and no custodial sentence is necessary, and, secondly, and failing the first plea, a short custodial sentence in this case would be a very severe punishment to the appellant, and in connection with this second plea, he relies on what

is generally known in England the "clang of prison gates" principle, to which I shall revert shortly.

Until the commission of the offences, the appellant had an unblemished record; indeed I would say he had an admirable record. He is a self-made man, starting his business with very little financial resources and had through his drive and industry succeeded in building up a substantial company, Lamipak, which, but for its imprudent investment in the real property market, would in all probability not have become insolvent. Lamipak and its subsidiaries had collapsed, and the appellant is now a bankrupt. However, it must be emphasized that the collapse of his companies was not brought about or contributed to by these offences he had committed. It appears that that was due to the collapse in the property market in 1984/85 and the recession in Singapore. The appellant is an innovator and an inventor; he was responsible for the development of high molecular weight and high density polyethylene products, and he designed machines for the manufacture of such polyethylene products. He had, to use his counsel's words, "placed Singapore on the world map" in the field of manufacture and processing of plastic film. His expertise had been sought by the Republic of Ireland and the People's Republic of China. In 1984/85, he served in two out of the nine subcommittees of the Economic Committee of Singapore and had been active in community work and development. Taking into account all these contributions made by the appellant and also all other mitigating circumstances, Mr. Sherrard submits that a financial penalty – a fine – would be an adequate and appropriate punishment. I agree that the circumstances here are highly exceptional and there are very strong extenuating circumstances in his favour. I agree also that the charge preferred against the appellant is one of the lowest levels in terms of criminality under section 406(a) of the Companies Act; plainly, there are different levels of criminality envisaged in this provision. It is of course not argued that the appellant is not criminally culpable; that of course he is. Nor is it argued that the charge against the appellant and the three other charges taken into consideration are not serious. What is argued by Mr. Sherrard is that the appellant was only guilty of deception – deceiving the banks into granting credit facilities to Lamipak. He was not charged for fraudulently or dishonestly inducing the banks. I accept his argument on this distinction but for the purpose of this appeal it is unnecessary for me to embark on a discussion on the distinction between inducing a bank by deceitful means and inducing a bank by fraudulent or dishonest means.

Nonetheless, I am unable to agree that only financial penalty is a sufficient punishment. This is not a case of an isolated instance of deviation from or transgression of the law momentarily committed without much plan or deliberation. It is a case where a very senior and responsible officer of a company on four separate occasions by deceitful means induced four banks over a period of about six months to grant credit facilities to his company, in which he owned 81% of the shares, and on each occasion a large sum of money was involved. Putting it at its lowest, these transactions reflect a consistent and systematic plan of deceit on banks. I am therefore of the opinion that a custodial sentence ought to be imposed.

The next question is the length of such custodial sentence. On this, I accept the argument advanced by Mr. Sherrard that in this case the "clang of prison gates" principle should apply. Putting it briefly, the principle is that in the case of a man with an unblemished record, the fact that he has a criminal conviction and finds himself in prison is a very grave punishment and a short prison term should in certain circumstances suffice. In the case of *R.* v. *Iorwerth Jones,*[1] Lord Lane C.J., after referring to the various mitigating factors in the case before the court, said at p. 135:

> "All these are matters which it is proper for the court to take into account. But there is one matter which we consider to be paramount in cases of this sort, and that is this. When a man aged 58 or in that region finds himself faced for the first time in his life with a criminal conviction, the mere fact that he goes to prison at all is a very grave punishment indeed. Of course the fact that he goes there means necessarily that he is going to suffer financial loss. But the closing of the prison gates behind him, for whatever length of time they may stay closed, is a very grave punishment indeed. It seems to us that in those circumstances, and in this particular case, against the background of this man's character and the comparatively small sums of money involved, this is a case par excellence where a short prison sentence was ample."

This principle was adopted and applied subsequently in numerous cases, some of which were cited by Mr. Sherrard in support, namely, *R.* v. *James Mitchell Jacob,*[2] *R.* v. *Ian Andrew Ward,*[3] *R.* v. *George Kelly,*[4] *R.* v. *Jayantolal Maganbhai Patel,*[5] and *R.* v. *Michael David Carr.*[6] With this principle I respectfully agree, and I adopt it for this case having regard to the particular circumstances.

In the words of Lord Lane C.J., in the circumstances of this case, and in particular the background of the appellant's character and his contribution to society and the country, this is a case par excellence where a short term of imprisonment is adequate punishment.

In my opinion, in this case, a term of imprisonment of three months would be adequate in all the circumstances. I therefore set aside the sentence of nine months imposed by the learned magistrate and substitute therefor a term of three months. To that extent I allow the appeal.

Appeal allowed.

Solicitors: *Robert W.H. Wang & Woo.*

PROBO PACIFIC LEASING PTE. LTD. v. LIM POH WENG & ANOR.

[O.C.J. (Wee Chong Jin C.J.) 24 March 1988]

[Singapore – Originating Summons No. 38 of 1987]

Land Law – Mortgaged property – Order for possession – Application for – Mortgage of property bought with CPF moneys – Property mortgaged without approval of CPF Board – Whether a valid mortgage – Whether mortgaged property is subject to CPF Board's interest – Central Provident Fund Act (Cap. 36, 1985 Ed.), s. 19(1) & (5) – Land Titles Act (Cap. 157, 1985 Ed.), s. 69.

Provident Fund – Property bought with CPF money – Mortgage without approval of CPF Board – Whether valid – Central Provident Fund Act (Cap. 36, 1985 Ed.), s. 19(1) & (5).

The defendants' leasehold property was mortgaged to the plaintiffs. The plaintiffs sought delivery of possession of the mortgaged property under Order 83 of the Rules of the Supreme Court 1970.

The defendants raised two objections to the plaintiffs' application: (a) the mortgage was invalid on the ground that the property had been mortgaged without the prior approval of the CPF Board and thus in breach of clause 7(a) of the "Conditions For the Use of CPF Money to Purchase Mindef Flats"; (b) even if the mortgage is valid, the plaintiffs' interest is subject to an earlier charge over the property in favour of the CPF Board.

Held, allowing the plaintiffs' application: (1) clause 7(a) is purely contractual in character between the CPF Board and the defendants. The plaintiffs were not a party to this agreement and cannot be bound by its terms or effects. The defendants' breach of clause 7(a) merely renders them accountable to the CPF Board but does not alter or affect any substantive rights which third parties have acquired in breach of this provision;

(2) the defendants' second argument has no merits. On the facts, the question of priorities posed by the defendants does not arise as no charge or caveat had been lodged by the CPF Board;

(3) the plaintiffs' interest, which had been duly registered, must prevail under the ordinary principles of registration in the Land Titles Act (Cap. 157, 1985 Ed.). The plaintiffs were thus entitled to possession of the mortgaged premises.

ORIGINATING SUMMONS.

Joyce Tan Sok Kheng (Miss) for the plaintiffs.

Toh Peng Ann for the defendants.

Cur. Adv. Vult.

Wee Chong Jin C.J.: By a mortgage dated 26 January 1985 made between the defendants (mortgagors) and the plaintiffs (mortgagees), the defendants' leasehold property was charged to secure repayment to the plaintiffs of moneys owing from one Sandcom Managing Agents Pte. Ltd. under a hire purchase agreement dated 24 January 1985, up to a sum not exceeding $300,000. In Suit No. 10488 of 1985, the plaintiffs obtained judgment against Sandcom for $301,966.65 with interest and costs, being moneys due under the hire purchase agreement. That judgment was unsatisfied and the plaintiffs are now looking to the defendants for payment pursuant to the mortgage. Despite demands, the defendants have not paid and the plaintiffs now seek delivery of possession of the mortgaged property under Order 83 of the Rules of Supreme Court 1970.

To succeed in their application, the plaintiffs are required by section 69 of the Land Titles Act (Cap. 157, 1985 Ed.) to establish a right to possession. On the facts, the defendants have defaulted in making payment of the sums secured by the mortgage. The one month's notice to pay was duly given by the plaintiffs but not complied with. As such, the provisions of section 69 of the Land Titles Act (Cap. 157, 1985 Ed.) appear to have been satisfied in this case. However, the defendants have raised two objections to the plaintiffs' application.

Firstly, the defendants are impugning the validity of the mortgage on the grounds that they had mortgaged the property to the plaintiffs without the prior approval of the Central Provident Fund Board (CPF Board). They say that this approval is required by certain conditions regulating use of CPF funds for purchase of Ministry of Defence (Mindef) flats.

The defendants rest their first ground on the fact that the acquisition of the property in question, a Mindef-owned property, was partially